No. 88-1254

Supreme Court, U.S.
FILED
MAY 25 1989
JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1988

TEDDYANNE SCHOO, PETITIONER

v.

UNITED STATES POSTAL SERVICE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

WILLIAM C. BRYSON
Acting Solicitor General
STUART E. SCHIFFER
Acting Assistant Attorney General
ROBERT S. GREENSPAN
WILLIAM G. COLE
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 633-2217

EDITOR'S NOTE:

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTION PRESENTED

Whether a complaint filed under 42 U.S.C. 2000e-16(c), which failed properly to name the Postmaster General as the defendant, could be amended pursuant to Fed. R. Civ. P. 15(c) because notice of the action had been given to a local Postal Service supervisor within the statutory limitations period.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	1
Argument	5
Conclusion	11

TABLE OF AUTHORITIES

Cases:

Baldwin County Welcome Center v. *Brown*, 466 U.S. 147 (1984) 10
Cooper v. *United States Postal Service*, 740 F.2d 714 (9th Cir. 1984), cert. denied, 471 U.S. 1022 (1985) 9
Hendrix v. *Memorial Hospital*, 776 F.2d 1255 (5th Cir. 1985) 8
Honeycutt v. *Long*, 861 F.2d 1346 (5th Cir. 1988) 8
Kirk v. *Cronvich*, 629 F.2d 404 (5th Cir. 1980) 8
Schiavone v. *Fortune*, 477 U.S. 21 (1986) 5, 7, 8, 10
Smith v. *Thomas*, EEOC Appeal No. 01883225 (Feb. 2, 1989) 3

Statute, regulation and rule:

Civil Rights Act of 1964, § 717(c), 42 U.S.C. 2000e-16(c) 2-3, 4, 6, 10
39 C.F.R. 2.2 9
Fed. R. Civ. P.:
Rule 15(c) 4, 5, 6, 8, 9
Advisory committee note 7

Miscellaneous:

Kaplan, *Continuing Work of the Civil Committee: 1966 Amendments of the Federal Rules of Civil Procedure (I)*, 81 Harv. L. Rev. 356 (1967) 9

In the Supreme Court of the United States

OCTOBER TERM, 1988

No. 88-1254

TEDDYANNE SCHOO, PETITIONER

v.

UNITED STATES POSTAL SERVICE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 22-29) is unpublished, but the decision is noted at 865 F.2d 1259 (Table). The order of the district court is unreported.

JURISDICTION

The judgment of the court of appeals was entered on December 27, 1988. The petition for a writ of certiorari was filed on January 27, 1989. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In 1982, Teddyanne Schoo was discharged from her job as a U.S. Postal Service distribution clerk at the main Baltimore, Maryland post office. Shortly thereafter, she

filed a complaint with the Equal Employment Opportunity Commission alleging that she had been terminated because of unlawful discrimination. On April 13, 1987, she received a letter from the agency, dated April 9, 1987, informing her of the EEOC's determination that no cognizable discrimination had occurred in her case. Pet. App. 23. Although the letter clearly conveyed the EEOC's conclusion of "no discrimination," one paragraph of the accompanying opinion ended in mid-sentence. See EEOC Appeal No. 01852831, at 6 (April 9, 1987), C.A. App. 28. Petitioner so notified the EEOC through counsel; she received a corrected opinion, dated April 21, 1987, on April 24, 1987. Pet. App. 23.

A notice attached to the April 13 letter advised petitioner that she had thirty days from the date of receipt to file an action in district court. It also cautioned her that:

> [I]f you file a civil action, YOU MUST NAME THE APPROPRIATE OFFICIAL AGENCY OR DEPARTMENT HEAD AS THE DEFENDANT. Rule 25(d)(2) of the Federal Rules of Civil Procedure provides that you may describe the defendant by official title rather than by name. Failure to provide the NAME OR OFFICIAL TITLE of the agency head or, where appropriate, the depa[r]tment head, may result in the loss of any judicial redress to which you may be entitled. (Please note: For this purpose, Department means the overall national organization, such as the now defunct Department of Health, Education and Welfare, *not* the local administrative department where you might work.) You must be sure that the proper defendant is named when you file your civil action.

Pet. App. 26. This notice explained the requirement of Section 717(c) of the Civil Rights Act of 1964 (Title VII),

42 U.S.C. 2000e-16(c), that "[w]ithin thirty days of receipt of notice of final action," an aggrieved employee may file a suit "in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant."[1]

2. On May 13, 1987, Schoo, through counsel, filed a complaint in the district court, naming as defendants the United States Postal Service and six individuals, not including the head of the Postal Service, the Postmaster General. She specified that service on the Postal Service be made to James A. McDougald, the postmaster of the main U.S. post office in Baltimore. She listed the other named defendants, all employees of the Postal Service, with their home addresses, or as having "address unknown." In addition, the address of one defendant was given as "Equal Employment Opportunity Commission", at a Philadelphia address, and the address of another was given as the post office in Gaithersburg, Maryland. See Compl. 1, C.A. App. 4.

The Baltimore postmaster and four of the five other defendants were eventually served by sending copies of the complaint and summons to them by certified mail. John

---

[1] The EEOC has amended the statement of appeal rights provided with its final decisions on claims of discrimination. The statement now reads:

> YOU *[i.e., the complainant]* MUST NAME THE PERSON WHO IS THE OFFICIAL AGENCY HEAD OR DEPARTMENT HEAD AS THE DEFENDANT. *Agency or department means the national organization, and not the local office, facility or department in which you might work.* DO NOT NAME JUST THE AGENCY OR DEPARTMENT. You must also state the official title of the agency head or department head. Failure to provide the NAME OR OFFICIAL TITLE of the agency head or department head may result in the dismissal of your case.

See, *e.g.*, *Smith* v. *Thomas*, EEOC Appeal No. 01883225 (Feb. 2, 1989), slip op. 7-8 (emphasis in original).

C. Holmes, described in the complaint as petitioner's immediate supervisor (Compl. 3, C.A. App. 6), was served at his home address on May 23, 1987; the Baltimore postmaster was served on May 27, 1987. Aff. of Compliance (filed June 18, 1987), C.A. App. 10. The United States Attorney for the District of Maryland was served with a copy of the complaint on August 10, 1987. Civil No. JH-87-1216, at 1 (D. Md. Jan. 12, 1988) (memorandum order), C.A. App. 62.

3. After the Postal Service filed a motion to dismiss for failure to file in a timely manner against the proper defendant, petitioner filed a motion to amend her complaint by naming the Postmaster General of the United States as a defendant and requesting leave to have the amendment relate back to the date of the original pleading pursuant to Rule 15(c) of the Federal Rules of Civil Procedure. Pet. App. 24-25. The district court disallowed petitioner's motion and dismissed her complaint. Mem. 1-3, C.A. App. 62-64. The district court ruled that even if Schoo were viewed as having received notice on April 24, rather than on April 13, no appropriate government official was served until after the expiration of the 30 day period in which suit could be filed under 42 U.S.C. 2000e-16(c): it found that service on a "lesser government official" within the 30 day period did not satisfy the notice requirements of Rule 15(c) so that the amendment could "relate back" to the original date of filing,[2] and it determined that effective notice to the United States Attorney,

[2] The district court was presumably referring to John C. Holmes as the "lesser government official." As the court of appeals noted, even assuming that Schoo had received final notice only when she received the second, corrected EEOC letter on April 24 (Pet. App. 27), her service on the postmaster of the main Baltimore post office did not take place until May 27. By contrast, Holmes was served on May 23, within the 30-day limitations period, if that period was triggered on April 24.

which *would* have satisfied Rule 15(c) requirements, did not occur until over two months after the expiration of the limitations period. Mem. 2, C.A. App. 63 (citing *Schiavone* v. *Fortune,* 477 U.S. 21 (1986)).

The court of appeals affirmed, rejecting petitioner's argument that her service on Holmes furnished the requisite notice to the Postmaster General. Pet. App. 27-29. The court did not attempt to define the specific Postal Service officials on whom service would provide adequate Rule 15(c) notice, but ruled that "in our view, a supervisory employee of a local post office is not such an official." Pet. App. 29.

ARGUMENT

1. Under Rule 15(c) of the Federal Rules of Civil Procedure, an amendment changing a party against whom a claim is asserted "relates back" to the date the original complaint was filed only if a plaintiff has given adequate notice to the proper defendant within the applicable limitations period. As clarified by this Court in *Schiavone* v. *Fortune,* 477 U.S. at 29:

> Relation back is dependent upon four factors, all of which must be satisfied: (1) the basic claim must have arisen out of the conduct set forth in the original pleading; (2) the party to be brought in must have received such notice that it will not be prejudiced in maintaining its defense; (3) that party must or should have known that, but for a mistake concerning identity, the action would have been brought against it; and (4) the second and third requirements must have been fulfilled within the prescribed limitations period.

As in *Schiavone*, requirements (2), (3), and (4) were not met by petitioner in the present case. She filed her civil action on May 13, 1987, exactly thirty days after notice of

the EEOC's decision. Her complaint, however, failed to name the proper statutory defendant, the Postmaster General. The first notice received by any of the *named* defendants in the case was ten days later, May 23, 1987. Therefore, the Postmaster General neither received notice nor "should have known" about the action by May 13, the last day within the prescribed limitations period. In fact, the district court indicated that the Postmaster General did not receive proper notice within the meaning of Rule 15(c) until August 10, 1987, when the United States Attorney for the District of Maryland received a copy of the complaint from the petitioner by certified mail. Mem. 2, C.A. App. 63.

2. Petitioner received a copy of the *corrected* EEOC letter on April 24, 1987. Pet. 23 n.1. She argues that it is the date of receipt of this letter, sent after her attorney advised the EEOC of a defect in the copy she received on April 13, that began the 30 day period within which she could file a civil action.

The argument is without merit. Section 717(c) of Title VII, 42 U.S.C. 2000e-16(c), provides that an appeal may be filed within 30 days "of receipt of notice of final action taken by * * * [the EEOC]." Petitioner received such notice on April 13, 1987, when she received the April 9, 1987, "no discrimination" decision. The corrected copy of the opinion subsequently sent did not constitute notice of a different "final action." It was merely another copy of the original "notice" with the identical "Conclusion" but with appropriate correction of a defective paragraph in the "Analysis and Findings" section.[3]

---

[3] When she filed her complaint in district court, petitioner stated that she had been notified of the EEOC decision "on April 13, 1987." Compl. 3. It was only after the Postal Service moved to dismiss her lawsuit on late filing grounds that she alleged she had not been notified until April 24. Petitioner does not contend that she did not understand until April 24 what the EEOC had determined in the letter she received April 13.

3. As the court of appeals determined (Pet. App. 27), even if petitioner did not receive notice sufficient to trigger the running of the limitations period until April 24, her claim still fails. It depends on her contention that the service on John Holmes, petitioner's immediate supervisor at the Baltimore post office in 1982, at his home address on Saturday, May 23, 1987, "would be considered notice to the * * * [Postmaster General]" since Mr. Holmes "had the authority to fire and defend against an employment discrimination grievance proceeding." Pet. 17.

In *Schiavone,* this Court recognized that Rule 15(c) could be satisfied only if the defendant to be brought in by the amendment, " 'received * * * notice of the institution of the action [within the applicable limitations period],' " and further noted that " 'the notice need not be formal.' " 477 U.S. at 31 (quoting Fed. R. Civ. P. 15 advisory committee note (emphasis deleted)). But *Schiavone*'s provision that notice to a party need not be "formal" is far from petitioner's contention that a party need not be notified, even informally, because someone else in his organization *was* notified. As the court of appeals put it:

> [w]e cannot construe the notice requirement of Rule 15(c) so liberally as to hold that notice of an action against the head of a huge organization such as the Postal Service can be effected by naming and serving a minor supervisory employee far removed from the cent[r]al comm[an]d and from any organizational structure through which the department head ordinarily responds to litigation.

Pet. App. 27-28.

The court of appeals found no evidence that anyone higher in the Post Office hierarchy than petitioner's superior was aware of her lawsuit until long after expiration of the limitations period. If "the linchpin [of Rule

15(c)] is notice, and notice within the limitations period" (*Schiavone*, 477 U.S. at 31), then service on Mr. Holmes was insufficient. See, *e.g.*, *Honeycutt* v. *Long*, 861 F.2d 1346, 1350-1351 (5th Cir. 1988) (service on head of subdivision of Department of Defense not sufficient under Rule 15(c) to serve as notice of Title VII suit to Secretary of Defense).[4]

The conclusion applies with special force here. First, petitioner received but failed to heed explicit instructions sent to her by the EEOC with its "no discrimination" letter. That notice warned her that "if you file a civil action, YOU MUST NAME THE APPROPRIATE OFFICIAL AGENCY OR DEPARTMENT HEAD AS THE DEFENDANT. * * * Failure to provide the NAME OR OFFICIAL TITLE of the agency head or, where

---

[4] Nor is *Kirk* v. *Cronvich*, 629 F.2d 404 (5th Cir. 1980), cited by petitioner (Pet. 15), to the contrary. In that case, the court found that the sheriff of the Parish of Jefferson had been effectively notified when suit was filed against the Parish and the Parish Sheriff's Office. Although service was eventually perfected to a deputy sheriff, the complaint had specified that service should be made to the sheriff; the Sheriff's Office and the sheriff were represented by the same attorneys; the deputy sheriff acted as the sheriff's agent since it could be assumed that he would bring the matter to the sheriff's attention; the deputy sheriff had clearly told the attorneys shared by the sheriff and Sheriff's Office about the suit; and relations between the sheriff and the Sheriff's Office were sufficiently close that they shared an "identity of interest". See 629 F.2d at 407-408. Simiarly, in *Hendrix* v. *Memorial Hospital*, 776 F.2d 1255 (5th Cir. 1985), also cited by petitioner (Pet. 15), the court concluded that service to Memorial Hospital of Galveston County Auxiliary, Inc. sufficed to notify Memorial Hospital of Galveston County where the two institutions shared the same mailing address, the same counsel and were located in the same building complex. See 776 F.2d at 1257-1258. In any event, both *Kirk* and *Hendrix* were decided before *Schiavone* and any inconsistency between those cases and the instant decision is no longer relevant given this Court's decision in *Schiavone*.

appropriate, the depa[r]tment head, may result in the loss of any judicial redress to which you may be entitled." Pet. App. 26.

And even if, despite this warning, petitioner had remained uncertain of whom to sue, she could have preserved her option to amend her complaint by delivering or mailing process "to the United States Attorney, or the United States Attorney's designee, or the Attorney General of the United States, or an agency or officer who would have been a proper defendant if named." Fed. R. Civ. P. 15(c). As we have explained at greater length in our brief in opposition (at 7-8) recently submitted in *Bates* v. *Tennessee Valley Authority*, petition for cert. pending No. 88-1548,[5] that provision of Rule 15(c) is specifically designed to provide persons suing the government with a means to protect themselves against the consequences of naming the wrong federal defendant. See *Cooper* v. *United States Postal Service,* 740 F.2d 714, 717 (9th Cir. 1984), cert. denied, 471 U.S. 1022 (1985); Kaplan, *Continuing Work of the Civil Committee: 1966 Amendments of the Federal Rules of Civil Procedure (I),* 81 Harv. L. Rev. 356, 407-410 (1967).

Thus, if petitioner had mailed or delivered the process to the United States Attorney, or any of the other officials listed in Rule 15(c), "within the period provided by law for commencing the action against [the proper defendant]," her amendment of the complaint to name the proper defendant would have related back to the date of filing of the original complaint.[6] In the current case, however, the

---

[5] The principal issue in *Bates* is whether Rule 15(c)'s notice requirements apply in cases involving the federal government; petitioner in the present case concedes (Pet. 14-19) that they do apply. We have furnished a copy of our brief in *Bates* to counsel for petitioner in this case.

[6] As the court of appeals noted (Pet. App. 28), service on the Postmaster General can also be accomplished by serving the General Counsel of the Postal Service. See 39 C.F.R. 2.2.

U.S. Attorney was served on August 10, 1987, more than two months after the expiration of the most generously calculated limitations period. That delay defeats petitioner's claim.[7] As this Court explained in *Schiavone*:

> Of course, there is an element of arbitrariness here, but that is a characteristic of any limitations period. And it is an arbitrariness imposed by the legislature and not by the judicial process.

477 U.S. at 31; see also *Baldwin County Welcome Center* v. *Brown*, 466 U.S. 147, 152 (1984) (in Title VII suits, as in other actions, "strict adherence to the procedural requirements specified by the legislature is the best guarantee of evenhanded administration of the law").

---

[7] Petitioner has not alleged that either the Postal Service or the EEOC engaged in affirmative misconduct, active misrepresentation, or any other activity that would support an argument that the 30-day filing period should be tolled on equitable grounds. Like *Baldwin County Welcome Center* v. *Brown*, 466 U.S. 147 (1984), "[t]this is not a case in which a claimant has received inadequate notice; or where a motion for appointment of counsel is pending and equity would justify tolling the statutory period until the motion is acted upon; or where the court has led the plaintiff to believe that she had done everything required of her * * * [or] where affirmative misconduct on the part of a defendant lulled the plaintiff into inaction." *Id.* at 151 (citations omitted). To the contrary, petitioner received adequate notice of the procedural requirements from the plain language of Section 717(c) of Title VII, 42 U.S.C. 2000e-16(c), which on its face specifies the proper defendant; she was represented by counsel throughout the litigation; and she received explicit instructions from the EEOC that she had to name the head of her agency as the proper defendant in order to preserve any judicial redress to which she could be entitled.

CONCLUSION

The petition for a writ of certiorari should be denied.
Respectfully submitted.

WILLIAM C. BRYSON
Acting Solicitor General
STUART E. SCHIFFER
Acting Assistant Attorney General
ROBERT S. GREENSPAN
WILLIAM G. COLE
Attorneys

MAY 1989

U.S. GOVERNMENT PRINTING OFFICE 1989—241 699/00270